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CONCORD, N.H.

1951

May 24

Mr. James J. Barry, Commissioner
Department of Public Welfare
State House Annex

Dear Sir:

Opinion re Settlement

Reference is made to your letter of April 20, 1951 concerning the liability of the Town of Deering for a certain recipient. I regret the delay, caused by inadvertence, in replying to your communication.

You state that the recipient had, without question, lived in Deering for a period in excess of 5 years before making application for relief. The selectmen of the town, however, question their liability for his support on the basis of two stated grounds, viz. (1) that he is not eligible to vote and (2) that the poll tax was levied against him for three years only, (although it appears that the recipient paid the poll tax unsolicited the fourth year). In support of their position the selectmen point to an excerpt appearing in the pamphlet of the State Tax Commission, "Statutes Relating to Taxation", page 29. On that page under R.L. c. 73, s. 1, there appears the following statement:

"Selectmen may, in their discretion, purposely omit to levy a poll tax against a resident of a town, of small means, to prevent his gaining a settlement in the town."

Under the law pertaining to acquisition of the settlement currently in effect, the matters of voting and of the payment of the poll tax are entirely immaterial. All that is required in order that one may gain a settlement is that he shall have had his domicile in the town for a period of at least five years, R. L. c. 123, s. 1 IX. One's domicile is, substantially, the place where he has his home.

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The excerpt above quoted had its origin in the case of Thompson v. Newtown 21 N. H. 595, decided in 1850. At that time one could gain a settlement only by the payment of his taxes; indeed this rule prevailed until 1933. See Laws 1933, c. 142. See also P. L. 1926, c. 105. As a result of the change in the law in 1933 the procedure suggested in the excerpt from the Thompson case no longer is effective to prevent one from gaining a settlement.

Therefore, in the absence of other matters bearing upon the question of domicile, it appears clear that the settlement of the recipient is in Deering and that he is a responsibility of that town.

Very truly yours,

Warren E. Waters
Assistant Attorney General

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